

Attorneys for Federal Defendants

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

### Defendant-Intervenors.

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) No. 4:23-cv-00280-TUC-JGZ  
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) **FEDERAL DEFENDANTS’**  
) **ANSWER TO PLAINTIFFS’**  
) **SECOND AMENDED**  
) **COMPLAINT, ECF NO. 116**  
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**PREFATORY NOTE**

Plaintiffs’ claims are reviewable, if at all, in accordance with the judicial review provisions of the Administrative Procedure Act (“APA”), 5 U.S.C. § 706. Under the APA, the Court is not a fact finder. Rather, this Court’s role is closer to that of an appellate tribunal, reviewing the administrative records that were before the federal agencies at the time they made the challenged decisions to determine whether those administrative records support the agencies’ decisions or whether the agencies’ decisions are arbitrary, capricious, or otherwise contrary to law. 5 U.S.C. § 706; *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729 (1985). This standard of review is “highly deferential” to the subject matter expertise of the agencies Congress has entrusted with primary jurisdiction over federal lands. *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 601 (9th Cir. 2014). And the Ninth Circuit has repeatedly instructed that the scope of judicial review of agency action is limited to the administrative record. *See, e.g., Lands Council v. Powell*, 395 F.3d 1019 (9th Cir. 2005); *Northcoast Envtl. Ctr. v. Glickman*, 136 F.3d 660, 665 (9th Cir. 1998).

Accordingly, judicial review of federal agency action is a unique procedure, different in both nature and scope from the procedures used to resolve other civil actions within the original jurisdiction of the federal district courts. *See, e.g., Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1579 (10th Cir. 1994) (stating that a “complaint” (and, hence, an “answer”) was not the appropriate vehicle for initiating judicial review under the APA). Nonetheless, as a matter of judicial efficiency, Federal Defendants Kerwin S. Dewberry, in his official capacity as Forest Supervisor of the Coronado National Forest, the United States Forest Service, and the United States Fish and Wildlife Service by and through their undersigned counsel, submit the following “Answer” to the claims and allegations in Plaintiffs’ September 30, 2025 Second Amended Complaint (“Complaint”) (ECF No. 116) challenging the Sunnyside Mineral Exploration Project.

1 The numbered paragraphs of this Answer correspond to the numbered paragraphs  
 2 of the Complaint. Where a sentence in the Complaint is followed by a citation, this  
 3 Answer treats the citation as part of the preceding sentence.

#### 4 **“INTRODUCTION”<sup>1</sup>**

5 1. The allegations that the Patagonia Mountains are “one of the most biologically  
 6 diverse mountain ranges in the United States,” and they “provide the municipal water  
 7 source for nearby communities” are vague or statements of opinion. Federal Defendants  
 8 lack knowledge or information sufficient to form a belief about the truth of those  
 9 allegations, and on this basis deny them. The allegations regarding the jaguars and  
 10 ocelots are overly broad generalized, and so inaccurate, and on this basis Federal  
 11 Defendants deny those allegations. Federal Defendants admit the remainder of the  
 12 allegations.

13 2. Federal Defendants deny the allegations in the first and second sentences.  
 14 Federal Defendants admit the allegations in the third sentence that the Forest Service  
 15 approved a Plan of Operations for the Sunnyside Exploration Drilling Project on  
 16 September 7, 2023. Federal Defendants admit the allegation in the fourth sentence that  
 17 the Sunnyside Project allows for drilling, but on no more than two drill pads at once, with  
 18 operations occurring up to 24 hours a day and 7 days a week. Federal Defendants deny  
 19 the remaining allegations.

20 3. Federal Defendants deny the allegations.

21 4. The first and second sentences consists of conclusions of law, which require no  
 22 response. Federal Defendants admit that the allegation in the third sentence that the  
 23 Forest Service engaged in formal consultation with the U.S. Fish and Wildlife Service.  
 24 The fourth and seventh sentences purports to characterize the Biological Opinion and  
 25 NEPA Decision for the Sunnyside Project, which are part of the Administrative Records

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26 <sup>1</sup> The section headings and subheadings used in this Answer follow the headings and  
 27 subheadings use in Plaintiffs’ Second Amended Complaint and are included solely for the  
 28 purpose of organizational convenience in matching the answers provided herein with the  
 allegations made in the Second Amended Complaint. The headings are not part of  
 Federal Defendants’ responses to the allegations.

1 for this case and speak for themselves. Federal Defendants deny any allegations contrary  
 2 to the plain language, context, and meaning of the final determinations of the agencies in  
 3 the Administrative Records. Federal Defendants deny the allegations in the fifth and  
 4 sixth sentences.

5 5. Federal Defendants deny the allegations and deny any violation of law.

6 6. Federal Defendants deny the allegations, deny that Plaintiffs are entitled to  
 7 their requested relief (or any relief whatsoever), and deny any violation of law.

### 8 **“JURISDICTION AND VENUE”**

9 7. The allegations consist of conclusions of law concerning jurisdiction, which  
 10 require no response.

11 8. The allegations consist of conclusions of law, which require no response.

12 9. The allegations consist of conclusions of law regarding venue, which require  
 13 no response.

14 10. The allegations consist of conclusions of law regarding venue, and thus require  
 15 no response.

16 11. Federal Defendants admit that they received a communication from Plaintiffs  
 17 titled “Sixty-Day Notice of Intent to Sue to Remedy Violations of the Endangered  
 18 Species Act” which was dated July 13, 2023. The remaining allegations consist of  
 19 conclusions of law, which require no response.

### 20 **“PARTIES”**

21 12. Federal Defendants lack knowledge or information sufficient to form a belief  
 22 about the truth of the allegations, and, on that basis, deny the allegations.

23 13. Federal Defendants lack knowledge or information sufficient to form a belief  
 24 about the truth of the allegations, and, on that basis, deny the allegations.

25 14. Federal Defendants lack knowledge or information sufficient to form a belief  
 26 about the truth of the allegations, and, on that basis, deny the allegations.

27 15. Federal Defendants lack knowledge or information sufficient to form a belief  
 28 about the truth of the allegations, and, on that basis, deny the allegations.

1 16. Federal Defendants lack knowledge or information sufficient to form a belief  
2 about the truth of the allegations, and, on that basis, deny the allegations.

3 17. Federal Defendants lack knowledge or information sufficient to form a belief  
4 about the truth of the allegations, and, on that basis, deny the allegations.

5 18. Federal Defendants lack knowledge or information sufficient to form a belief  
6 about the truth of the allegations, and, on that basis, deny the allegations.

7 19. Federal Defendants lack knowledge or information sufficient to form a belief  
8 about the truth of the allegations, and, on that basis, deny the allegations.

9 20. Defendants deny the allegation in the second sentence that the challenged  
10 mineral exploration project will adversely affect biodiversity in the Patagonia Mountains.  
11 Federal Defendants lack knowledge or information sufficient to form a belief about the  
12 truth of the remaining allegations, and, on that basis, deny the allegations.

13 21. Federal Defendants lack knowledge or information sufficient to form a belief  
14 about the truth of the allegations, and, on that basis, deny the allegations.

15 22. Federal Defendants deny the allegations, deny that Plaintiffs or their members  
16 have suffered (or will suffer) any harm to their recreational or aesthetic interests in the  
17 Coronado National Forest, deny the Plaintiffs have suffered (or will suffer) any other  
18 harm fairly traceable to Federal Defendants, and deny any violation of law.

19 23. Federal Defendants deny the allegations, deny that Plaintiffs or their members  
20 have suffered (or will suffer) any harm to their recreational or aesthetic interests in the  
21 Coronado National Forest, deny the Plaintiffs have suffered (or will suffer) any other  
22 harm traceable to Federal Defendants, and deny any violation of law.

23 24. Federal Defendants admit that Plaintiffs submitted comments during the public  
24 comment period and administrative objections during the pre-decisional administrative  
25 review period. Federal Defendants further admit that they received a “60-Day Notice of  
26 Intent to Sue to Remedy Violations of the Endangered Species Act” dated July 13, 2023.  
27 The timeliness of comments submitted by Plaintiffs is a legal conclusion, which requires  
28 no response. If Plaintiffs brief any claims at summary judgment that were not preserved

1 in their comments, objections, and letter, Federal Defendants will object to those claims  
2 at that time. Federal Defendants deny the remaining allegations.

3 25. The allegations consist of conclusions of law and thus require no response.

4 26. The allegations consist of conclusions of law and thus require no response.

5 27. The allegations consist of conclusions of law and thus require no response.

## 6 **“LEGAL BACKGROUD”**

### 7 **I. The Endangered Species Act**

8 28. The allegations purport to quote from and characterize the Endangered Species  
9 Act and caselaw interpreting the Act, asserting legal conclusions that require no response.  
10 Federal Defendants deny any allegations contrary to the plain language, context, and  
11 meaning of the final determinations of the agencies in the Administrative Records.

12 29. The allegations purport to quote from and characterize the Endangered Species  
13 Act, asserting legal conclusions that require no response. Federal Defendants deny any  
14 allegations contrary to the plain language, context, and meaning of the final  
15 determinations of the agencies in the Administrative Records.

16 30. The allegations purport to quote from and characterize the Endangered Species  
17 Act, asserting legal conclusions that require no response. Federal Defendants deny any  
18 allegations contrary to the plain language, context, and meaning of the final  
19 determinations of the agencies in the Administrative Records.

20 31. The allegations purport to quote from and characterize the Endangered Species  
21 Act, asserting legal conclusions that require no response. Federal Defendants deny any  
22 allegations contrary to the plain language, context, and meaning of the final  
23 determinations of the agencies in the Administrative Records.

24 32. The allegations purport to quote from and characterize the Endangered Species  
25 Act and caselaw interpreting the Act, asserting legal conclusions that require no response.  
26 Federal Defendants deny any allegations contrary to the plain language, context, and  
27 meaning of the final determinations of the agencies in the Administrative Records.  
28

1       33.     The allegations purport to quote from and characterize the Endangered Species  
2 Act, caselaw interpreting the Act, and regulations implementing the Act, asserting legal  
3 conclusions that require no response. Federal Defendants deny any allegations contrary  
4 to the plain language, context, and meaning of the final determinations of the agencies in  
5 the Administrative Records.

6       34.     The allegations purport to quote from and characterize the Endangered Species  
7 Act, caselaw interpreting the Act, and regulations implementing the Act, asserting legal  
8 conclusions that require no response. Federal Defendants deny any allegations contrary  
9 to the plain language, context, and meaning of the final determinations of the agencies in  
10 the Administrative Records.

11       35.     The allegations purport to quote from and characterize the Endangered Species  
12 Act and regulations implementing the Act, asserting legal conclusions that require no  
13 response. Federal Defendants deny any allegations contrary to the plain language,  
14 context, and meaning of the final determinations of the agencies in the Administrative  
15 Records.

16       36.     The allegations purport to quote from and characterize the Endangered Species  
17 Act and caselaw interpreting the Act, asserting legal conclusions that require no response.  
18 Federal Defendants deny any allegations contrary to the plain language, context, and  
19 meaning of the final determinations of the agencies in the Administrative Records.

20       37.     The allegations purport to quote from and characterize the Endangered Species  
21 Act, asserting legal conclusions that require no response. Federal Defendants deny any  
22 allegations contrary to the plain language, context, and meaning of the final  
23 determinations of the agencies in the Administrative Records.

24       38.     The allegations purport to quote from and characterize the Endangered Species  
25 Act and regulations implementing the Act, asserting legal conclusions that require no  
26 response. Federal Defendants deny any allegations contrary to the plain language,  
27 context, and meaning of the final determinations of the agencies in the Administrative  
28 Records.

## II. The National Environmental Policy Act

39. The allegations purport to quote from and characterize the National Environmental Policy Act (NEPA) and caselaw interpreting NEPA, asserting legal conclusions that require no response. Federal Defendants deny any allegations contrary to the plain language, context, and meaning of the final determinations of the agencies in the Administrative Records.

40. The allegations purport to quote from and characterize NEPA and NEPA's implementing regulations, asserting legal conclusions that require no response. Federal Defendants deny any allegations contrary to the plain language, context, and meaning of the final determinations of the agencies in the Administrative Records.

41. The allegations purport to quote from and characterize NEPA's implementing regulations and caselaw interpreting NEPA, asserting legal conclusions that require no response. Federal Defendants deny any allegations contrary to the plain language, context, and meaning of the final determinations of the agencies in the Administrative Records.

42. The allegations purport to quote from and characterize NEPA's implementing regulations, asserting legal conclusions that require no response. Federal Defendants deny any allegations contrary to the plain language, context, and meaning of the final determinations of the agencies in the Administrative Records.

43. The allegations purport to quote from and characterize NEPA's implementing regulations and caselaw, asserting legal conclusions that require no response. Federal Defendants deny any allegations contrary to the plain language, context, and meaning of the final determinations of the agencies in the Administrative Records.

44. The allegations purport to quote from and characterize NEPA's implementing regulations and caselaw interpreting NEPA, asserting legal conclusions that require no response. Federal Defendants deny any allegations contrary to the plain language, context, and meaning of the final determinations of the agencies in the Administrative Records.



1       45.     The allegations purport to quote from and characterize caselaw interpreting  
2 NEPA, asserting legal conclusions that require no response. Federal Defendants deny  
3 any allegations contrary to the plain language, context, and meaning of the final  
4 determinations of the agencies in the Administrative Records.

5       46.     The allegations purport to quote from and characterize NEPA's implementing  
6 regulations and caselaw interpreting NEPA, asserting legal conclusions that require no  
7 response. Federal Defendants deny any allegations contrary to the plain language,  
8 context, and meaning of the final determinations of the agencies in the Administrative  
9 Records.

10       47.     Federal Defendants admit the allegations in the first sentence. The remaining  
11 allegations consist of conclusions of law and thus require no response.

12       48.     The allegations purport to quote from and characterize the Fiscal  
13 Responsibility Act of 2023 and caselaw on retroactive application of statutes, asserting  
14 legal conclusions that require no response. Federal Defendants deny any allegations  
15 contrary to the plain language, context, and meaning of the final determinations of the  
16 agencies in the Administrative Records.

### 17 **III. The Administrative Procedure Act**

18       49.     The allegations purport to quote from the Administrative Procedure Act  
19 (APA), asserting legal conclusions that require no response. Federal Defendants deny  
20 any allegations contrary to the plain language, context, and meaning of the final  
21 determinations of the agencies in the Administrative Records.

22       50.     The allegations purport to quote from the Administrative Procedure Act  
23 (APA), asserting legal conclusions that require no response. Federal Defendants deny  
24 any allegations contrary to the plain language, context, and meaning of the final  
25 determinations of the agencies in the Administrative Records.

## 26 **“FACTUAL BACKGROUND”**

### 27 **I. The Patagonia Mountains**

28

1        51. Federal Defendants admit the allegations that the Patagonia Mountains are  
2 located in the Coronado National Forest, run north from the Mexican border, and are  
3 approximately 50 miles southeast of Tucson, Arizona. The remaining allegations are  
4 vague or statements of opinion. Federal Defendants lack knowledge or information  
5 sufficient to form a belief about the truth of those allegations, and on that basis deny  
6 them.

7        52. Federal Defendants deny the allegation that the Patagonia Mountains are  
8 known for wet summers. The remaining allegations are vague or statements of opinion.  
9 Federal Defendants lack knowledge or information sufficient to form a belief about the  
10 truth of those allegations, and on that basis deny them.

11       53. Federal Defendants admit the allegations that the Patagonia Mountains contain  
12 the tributaries of Sonoita creek. The remaining allegations are vague, overbroad, or  
13 statements of opinion. Federal Defendants lack knowledge or information sufficient to  
14 form a belief about the truth of those allegations, and on that basis deny them.

## 15       **II. Endangered and Threatened Species in the Area**

16       54. The allegation in the first sentence that the Patagonia Mountains “are a region  
17 of tremendous biodiversity” is vague or a statement of opinion. Federal Defendants lack  
18 the knowledge or information sufficient to form a belief as to the truth of that allegation,  
19 and on that basis deny it. Federal Defendants deny the allegations in the second sentence  
20 that the beardless chinchweed, Chiricahua leopard frog, and Huachuca water-umbel are  
21 present in the Patagonia Mountains. Federal Defendants admit the remaining allegations.

22       55. Federal Defendants admit the allegations in the first sentence. The allegations  
23 in the second sentence are vague. Federal Defendants lack knowledge or information  
24 sufficient to form a belief as to the truth of those allegations, and on that basis deny them.  
25 Federal Defendants admit the allegations in the third and fourth sentences. The  
26 allegations in the fifth and sixth sentences are vague. Federal Defendants lack knowledge  
27 or information sufficient to form a belief as to the truth of those allegations and on that  
28 basis deny them. The seventh sentence purport to characterize a March 16, 1993 rule in

1 the federal register, which speaks for itself and contains the best evidence of its contents.  
2 Federal Defendants deny any allegations contrary to the plain language, context, and  
3 meaning of the final determinations of the agencies in the Administrative Records. The  
4 eighth sentence purports to characterize an August 31, 2004 rule in the federal register,  
5 which speaks for itself and is the best evidence of its contents. Federal Defendants deny  
6 any allegations contrary to the plain language, context, and meaning of the final  
7 determinations of the agencies in the Administrative Records. Federal Defendants admit  
8 the allegations in the ninth sentence. The tenth and eleventh sentences purport to  
9 characterize the 2012 revision of the Mexican Spotted Owl Recovery Plan, which speaks  
10 for itself and is the best evidence of its contents. Federal Defendants deny any  
11 allegations contrary to the plain language, context, and meaning of the final  
12 determinations of the agencies in the Administrative Records.

13 56. Federal Defendants admit the allegations of the first sentence and admit that  
14 Western yellow-billed cuckoos are present in parts of the Patagonia Mountains. The  
15 allegations in the second and fifth sentences are vague or statements of opinion. Federal  
16 Defendants lack knowledge or information sufficient to form a belief about the truth of  
17 those allegations, and on that basis deny them. The remaining allegations purport to  
18 characterize documents and statements on websites, which speak for themselves and are  
19 the best evidence of their contents. Federal Defendants deny any allegations contrary to  
20 the plain language, context, and meaning of the final determinations of the agencies in the  
21 Administrative Records.

22 57. Federal Defendants admit the allegations in the first sentence. The allegations  
23 in the second sentence are vague or statements of opinion. Federal Defendants lack  
24 knowledge or information sufficient to form a belief about the truth of those allegations,  
25 and on that basis deny them. Federal Defendants admit the allegations in the third  
26 sentence. The allegations in the fourth sentence purport to characterize a March 30, 1972  
27 rule in the Federal Register, which speaks for itself is the best evidence of its contents.  
28 Federal Defendants deny any allegations contrary to the plain language, context, and

1 meaning of the final determinations of the agencies in the Administrative Records.  
2 Federal Defendants admit the allegations in the sixth, seventh, and ninth sentences that a  
3 jaguar known as El Jefe has been observed in the Santa Rita mountains and that two or  
4 three other jaguars have been observed in the area since. The remaining allegations in the  
5 fifth, sixth, and seventh sentences are vague. Federal Defendants lack knowledge or  
6 information sufficient to form a belief about the truth of those allegations, and on that  
7 basis deny them. The allegations in the eighth sentence purport to characterize a March 5,  
8 2014 rule in the Federal Register, which speaks for itself is the best evidence of its  
9 contents. Federal Defendants deny any allegations contrary to the plain language,  
10 context, and meaning of the final determinations of the agencies in the Administrative  
11 Records.

12 58. The allegations purport to quote from and characterize a notice in the federal  
13 register and an article, which speak for themselves and are the best evidence of their  
14 contents. Federal Defendants deny any allegations contrary to the plain language,  
15 context, and meaning of the final determinations of the agencies in the Administrative  
16 Records.

17 59. Federal Defendants admit the allegations in the first sentence. Federal  
18 Defendants lack knowledge or information sufficient to form a belief about the truth of  
19 the allegations of the second sentence, and on this basis deny them. Federal Defendants  
20 aver that there is no breeding population of ocelots in Arizona. The third sentence  
21 purports to characterize March 30, 1972 and July 21, 1982 rules in the Federal Register,  
22 which speak for themselves are the best evidence of their contents Federal Defendants  
23 deny any allegations contrary to the plain language, context, and meaning of the final  
24 determinations of the agencies in the Administrative Records. The remaining allegations  
25 are vague or statements of opinion. Federal Defendants lack knowledge or information  
26 sufficient to form a belief about the truth of those allegations, and on that basis deny  
27 them.

### 28 **III. The Sunnyside Project**

1       60. Federal Defendants admit the allegations but aver that the original Plan of  
2 Operations for the Sunnyside Project was submitted to the Forest Service on June 14,  
3 2011.

4       61. The allegations purport to characterize the June 14, 2011 Plan of Operations  
5 for the Sunnyside Project, which speaks for itself and is the best evidence of its contents.  
6 Federal Defendants deny any allegations contrary to the plain language, context, and  
7 meaning of the final determinations of the agencies in the Administrative Records.

8       62. The allegations purport to characterize unspecified revisions to the April 1,  
9 2011 Plan of Operations for the Sunnyside Project, documents that speak for themselves  
10 and are the best evidence of their contents. Federal Defendants deny any allegations  
11 contrary to the plain language, context, and meaning of the final determinations of the  
12 agencies in the Administrative Records.

13       63. The first sentence purports to characterize various unspecified comments  
14 submitted by PARA and other conservation organizations, which speak for themselves  
15 and are the best evidence of their contents. Federal Defendants deny any allegations  
16 contrary to the plain language, context, and meaning of the final determinations of the  
17 agencies in the Administrative Records. The second and third sentences purport to  
18 characterize the September 12, 2014 Decision Memorandum for the Sunnyside Project,  
19 which speaks for itself and is the best evidence of its contents. Federal Defendants deny  
20 any allegations contrary to the plain language, context, and meaning of the final  
21 determinations of the agencies in the Administrative Records.

22       64. The allegations purport to characterize court documents from an earlier case,  
23 which speak for themselves and are the best evidence of their contents. Federal  
24 Defendants deny any allegations contrary to the plain language, context, and meaning of  
25 the final determinations of the agencies in the Administrative Records.

26       65. The allegations purport to characterize the April 8, 2015 Decision  
27 Memorandum for the Sunnyside Project, which speaks for itself and is the best evidence  
28 of its contents. Federal Defendants deny any allegations contrary to the plain language,

1 context, and meaning of the final determinations of the agencies in the Administrative  
2 Records.

3 66. Federal Defendants admit the allegations in the first sentence. The remaining  
4 allegations purport to characterize a September 15, 2015 District Court Order, which  
5 speaks for itself and is the best evidence of its contents. Federal Defendants deny any  
6 allegations contrary to the plain language, context, and meaning of the final  
7 determinations of the agencies in the Administrative Records.

8 67. Federal Defendants admit the allegation in the first sentence that the current  
9 proponent for the Sunnyside Project is Arizona Standard, LLC, a subsidiary of Barksdale  
10 Capital Corporation. Federal Defendants lack knowledge or information sufficient to  
11 form a belief about the truth of the remaining allegations in the first sentence, and on this  
12 basis deny them. The second sentence purports to characterize a 2019 revision to the  
13 Plan of Operations for Sunnyside Project, which speaks for itself and is the best evidence  
14 of its contents. Federal Defendants deny any allegations contrary to the plain language,  
15 context, and meaning of the final determinations of the agencies in the Administrative  
16 Records. The third and fourth sentences purport to characterize the December 1, 2022  
17 Biological Opinion for the Sunnyside Project, which speaks for itself and is the best  
18 evidence of its contents. Federal Defendants deny any allegations contrary to the plain  
19 language, context, and meaning of the final determinations of the agencies in the  
20 Administrative Records. Federal Defendants deny the allegations in the fifth sentence,  
21 but aver that Arizona Standard submitted multiple revised Plans of Operations in 2021.

22 68. The allegations purport to characterize the Plan of Operations for the  
23 Sunnyside Project, which speaks for itself and is the best evidence of its contents.  
24 Federal Defendants deny any allegations contrary to the plain language, context, and  
25 meaning of the final determinations of the agencies in the Administrative Records.

26 69. The allegations purport to quote from and characterize the Plan of Operations  
27 for the Sunnyside Project, which speaks for itself and is the best evidence of its contents.  
28

1 Federal Defendants deny any allegations contrary to the plain language, context, and  
2 meaning of the final determinations of the agencies in the Administrative Records.

3 70. Federal Defendants admit the allegations and aver that Table 5 of the final  
4 Sunnyside Plan of Operations contains the most current information on this issue.  
5 Federal Defendants deny any allegations contrary to the plain language, context, and  
6 meaning of the final determinations of the agencies in the Administrative Records.

7 71. The allegations purport to quote from and characterize the January 2023  
8 Environmental Assessment for the Sunnyside Project, which speaks for itself and is the  
9 best evidence for its contents. Federal Defendants deny any allegations contrary to the  
10 plain language, context, and meaning of the final determinations of the agencies in the  
11 Administrative Records.

12 72. Federal Defendants admit the allegations in the first sentence. The allegations  
13 of the second sentence are vague or statements of opinion. Federal Defendants lack  
14 knowledge or information sufficient to form a belief about the truth of those allegations,  
15 and on this basis deny them. The allegations of the third sentence consist of conclusions  
16 of law, which require no response.

17 **IV. Agency Efforts to Comply with ESA: Sunnyside Project**

18 73. Federal Defendants admit the allegations of the first sentence. The remaining  
19 allegations purport to characterize the August 2020 Biological Assessment for the  
20 Sunnyside Project, which speaks for itself and is the best evidence for its contents.  
21 Federal Defendants deny any allegations contrary to the plain language, context, and  
22 meaning of the final determinations of the agencies in the Administrative Records.

23 74. The allegations in the first sentence purports to characterize an August 6, 2020  
24 communication between the USFS and the FWS, which speaks for itself and is the best  
25 evidence for its contents. Federal Defendants deny any allegations contrary to the plain  
26 language, context, and meaning of the final determinations of the agencies in the  
27 Administrative Records. The remaining allegations purport to quote from and  
28 characterize the December 1, 2022 Biological Opinion for the Sunnyside Project, which



1 speaks for itself and is the best evidence for its contents. Federal Defendants deny any  
2 allegations contrary to the plain language, context, and meaning of the final  
3 determinations of the agencies in the Administrative Records.

4 **V. Agency Efforts to Comply with NEPA: Sunnyside Project**

5 75. Federal Defendants admit the allegations in the first and second sentences.  
6 The remaining allegations purport to quote from and characterize comments to the March  
7 2, 2021 Draft EA for the Sunnyside Project, which speak for themselves and are the best  
8 evidence for their contents. Federal Defendants deny any allegations contrary to the plain  
9 language, context, and meaning of the final determinations of the agencies in the  
10 Administrative Records, deny that those comments have merit, and deny the violations of  
11 law alleged in those comments.

12 76. Federal Defendants admit the allegation in the first sentence that responses to  
13 the comments were published in June of 2023. Federal Defendants deny the remaining  
14 allegations in the first sentence. The remaining allegations purport to quote from and  
15 characterize the Response to Comments on the Sunnyside Project, which speaks for itself  
16 and is the best evidence for its contents. Federal Defendants deny any allegations  
17 contrary to the plain language, context, and meaning of the final determinations of the  
18 agencies in the Administrative Records.

19 77. Federal Defendants admit the allegations.

20 78. Federal Defendants admit the allegations in the first sentence. The remaining  
21 allegations purport to quote from and characterize objections to the Sunnyside Project,  
22 which speak for themselves and are the best evidence of their contents. Federal  
23 Defendants deny any allegations contrary to the plain language, context, and meaning of  
24 the final determinations of the agencies in the Administrative Records, deny that the  
25 objections have merit, and deny the violations of law alleged in those objections.

26 79. The allegations purport to characterize comments and objections to the  
27 Sunnyside Project, which speak for themselves and are the best evidence of their  
28 contents. Federal Defendants deny any allegations contrary to the plain language,



1 context, or meaning of those comments and objections, deny that those comments and  
 2 objections have merit, and deny the violations of law alleged in the comments and  
 3 objections.

4 80. Federal Defendants admit the allegations in the first and last sentences. The  
 5 remaining allegations purport to quote from and characterize the May 25, 2023 Response  
 6 to Plaintiff's Objections to the Sunnyside Project, which speaks for itself and is the best  
 7 evidence of its contents. Federal Defendants deny any allegations contrary to the plain  
 8 language, context, and meaning of the final determinations of the agencies in the  
 9 Administrative Records.

10 81. Federal Defendants admit the allegations.

11 82. The allegations purport to quote from and characterize regulations, asserting  
 12 legal conclusions that require no response. Federal Defendants deny any allegations  
 13 contrary to the plain language, context, and meaning of the final determinations of the  
 14 agencies in the Administrative Records.

#### 15 **"ERRORS IN THE ESA PROCESS"**

16 83. Federal Defendants deny the allegations.

17 84. Federal Defendants deny the allegations and deny any violation of law.

#### 18 **I. Failure to Use Best Available Science Regarding Owl Impacts**

19 85. Federal Defendants deny the allegations and deny any violation of law.

20 86. The allegations purport to quote from and characterize the Biological Opinion  
 21 for the Sunnyside Project, which speaks for itself and is the best evidence of its contents.  
 22 Federal Defendants deny any allegations contrary to the plain language, context, and  
 23 meaning of the final determinations of the agencies in the Administrative Records, deny  
 24 any error in preparing the Biological Opinion, and deny any violation of law.

25 87. The allegations in the first three sentences purport to characterize a 1999 study  
 26 by David K. Delaney and others, which speaks for itself and is the best evidence of its  
 27 contents. Federal Defendants deny any allegations contrary to the plain language,  
 28 context, and meaning of the final determinations of the agencies in the Administrative

1 Records. The remaining allegations purport to characterize the Biological Opinion for  
 2 the Sunnyside Project, which speaks for itself and is the best evidence of its contents.  
 3 Federal Defendants deny any allegations contrary to the plain language, context, and  
 4 meaning of the final determinations of the agencies in the Administrative Records, deny  
 5 any error in preparing the Biological Opinion, and deny any violation of law.

6 88. The allegations purport to characterize a 1999 study by David K. Delaney and  
 7 others and the Biological Opinion for the Sunnyside Project, which speak for themselves  
 8 and are the best evidence of their contents. Federal Defendants deny any allegations  
 9 contrary to the plain language, context, and meaning of the final determinations of the  
 10 agencies in the Administrative Records.

11 89. Federal Defendants deny the allegations in the first two sentences and deny any  
 12 violation of law. The remaining allegations purport to quote from and characterize  
 13 scientific papers, which speak for themselves and are the best evidence of their contents.  
 14 Federal Defendants deny any allegations contrary to the plain language, context, and  
 15 meaning of the final determinations of the agencies in the Administrative Records.

16 90. Federal Defendants deny the allegations in the first two sentences. The  
 17 remaining allegations purport to characterize the Biological Assessment for the  
 18 Sunnyside Project, which speaks for itself and is the best evidence of its contents.  
 19 Federal Defendants deny any allegations contrary to the plain language, context, and  
 20 meaning of the final determinations of the agencies in the Administrative Records, deny  
 21 any error in preparing the Biological Assessment, and deny any violation of law.

22 91. Federal Defendants deny the allegations and deny any violation of law.

23 92. Federal Defendants deny the allegations and deny any violation of law.

## 24 **II. Disregard of Relevant Information About Project Impacts**

25 93. Federal Defendants deny the allegations and deny any violation of law.

26 94. Federal Defendants deny the allegations and deny any violation of law.

27 95. Federal Defendants deny the allegations and deny any violation of law.

## 28 **“ERRORS IN THE NEPA PROCESS”**

1       96. Federal Defendants deny the allegations and deny any violation of law.

2       **I. Failure to Consider the Sunnyside Project's Cumulative Impacts**

3       97. Federal Defendants deny the allegations in the first sentence and deny any  
4 violation of law. The allegations of the second and third sentences (including the  
5 standalone parenthetical) are vague or statements of opinion. Federal Defendants lack  
6 knowledge or information sufficient to form a belief about the truth of the allegations,  
7 and on that basis deny them. Federal Defendants deny the allegations in the last sentence  
8 and deny any violation of law.

9       98. The allegations in the first and second sentences purport to characterize the  
10 Environmental Assessment and Biological Opinion for the Sunnyside Project, which  
11 speak for themselves and are the best evidence of their contents. Federal Defendants  
12 deny any allegations contrary to the plain language, context, and meaning of the final  
13 determinations of the agencies in the Administrative Records. The allegations in the third  
14 sentence purport to quote from and characterize a webpage, which speaks for itself and is  
15 the best evidence of its contents. Federal Defendants deny any allegations contrary to the  
16 plain language, context, and meaning of the final determinations of the agencies in the  
17 Administrative Records. The allegations in the fourth and fifth sentences are vague or  
18 statements of opinion. Federal Defendants lack knowledge or information sufficient to  
19 form a belief about the truth of the allegations, and on that basis deny them. The  
20 allegations in the sixth sentence purport to characterize the Environmental Assessment  
21 for the Sunnyside Project, which speaks for itself and is the best evidence of its contents.  
22 Federal Defendants deny any allegations contrary to the plain language, context, and  
23 meaning of the final determinations of the agencies in the Administrative Records and  
24 deny any violation of law.

25       99. Federal Defendants deny the allegations.

26       100. Federal Defendants deny the allegations in the first sentence. The allegations  
27 in the second sentence purport to characterize a filing in this case, which speaks for itself  
28

1 and contains the best evidence of its contents. Federal Defendants admit that the Forest  
2 Service completed a “Supplemental Information Report” (“SIR”) in October 2024.

3 101. Federal Defendants admit that Plaintiffs provided the Forest Service with a  
4 letter dated September 16, 2024. The remaining allegations purport to characterize that  
5 letter, which speaks for itself and is the best evidence of its contents. Federal Defendants  
6 deny any allegations contrary to the plain language, context, and meaning of the final  
7 determinations of the agencies in the Administrative Records and deny any violation of  
8 law.

9 102. The allegations purport to characterize the SIR, which speaks for itself and is  
10 the best evidence of its contents. Federal Defendants deny any allegations contrary to the  
11 plain language, context, and meaning of the final determinations of the agencies in the  
12 Administrative Records and deny any violation of law.

13 103. The allegations in the first three sentences purport to quote from and  
14 characterize the Environmental Assessment and Biological Assessment for the Sunnyside  
15 Project, which speak for themselves and are the best evidence of their contents. Federal  
16 Defendants deny any allegations contrary to the plain language, context, and meaning of  
17 the final determinations of the agencies in the Administrative Records. The allegations in  
18 the fourth and fifth sentences purport to characterize a webpage, which speaks for itself  
19 and is the best evidence of its contents. Federal Defendants deny any allegations contrary  
20 to the plain language, context, and meaning of the final determinations of the agencies in  
21 the Administrative Records. Federal Defendants deny the allegations in the sixth  
22 sentence.

23 104. The allegations in the second sentence purport to quote from and characterize a  
24 response to objections on the Sunnyside Project. Federal Defendants deny any  
25 allegations contrary to the plain language, context, and meaning of the final  
26 determinations of the agencies in the Administrative Records. Federal Defendants deny  
27 the remaining allegations and deny any violation of law.  
28

1 105. Federal Defendants admit the allegation in the first sentence that the Sunnyside  
2 Project will not result in significant adverse effects to ESA-listed species. Federal  
3 Defendants deny the remaining allegations and deny any violation of law.

4 **II. Failure to Adequately Analyze Threats to Groundwater Quality**

5 106. Federal Defendants deny the allegations in the first and last sentences. The  
6 remaining allegations purport to quote from and characterize the Plan of Operations and  
7 Environmental Assessment for the Sunnyside Project, the Decision Notice, and an  
8 unidentified “hydrologist evaluation.” Federal Defendants deny any allegations contrary  
9 to the plain language, context, and meaning of the final determinations of the agencies in  
10 the Administrative Records.

11 107. Federal Defendants deny the allegations of the first sentence. The remaining  
12 allegations purport to quote from and characterize various documents, which speak for  
13 themselves and are the best evidence of their contents. Federal Defendants deny any  
14 allegations contrary to the plain language, context, and meaning of the final  
15 determinations of the agencies in the Administrative Records.

16 108. The allegations in the second sentence purport to quote from and characterize  
17 the June 24, 2022 Water Resources Report and the Environmental Assessment for the  
18 Sunnyside Project, which speak for themselves and are the best evidence of their  
19 contents. Federal Defendants deny any allegations contrary to the plain language,  
20 context, and meaning of the final determinations of the agencies in the Administrative  
21 Records. Federal Defendants deny the remaining allegations.

22 109. The allegations in the first and last clause of the last sentence purport to quote  
23 from and characterize the Environmental Assessment for the Sunnyside Project, which  
24 speaks for itself and is the best evidence of its contents. Federal Defendants deny any  
25 allegations contrary to the plain language, context, and meaning of the final  
26 determinations of the agencies in the Administrative Records. Federal Defendants deny  
27 the remaining allegations.  
28

**III. Failure to Properly Consider Scientific Objections Regarding the Sunnyside Project**

110. Federal Defendants deny the allegations in the first sentence. The remaining allegations purport to quote from and characterize objections and responses to objections for the Sunnyside Project, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations contrary to the plain language, context, and meaning of the final determinations of the agencies in the Administrative Records, deny that the objections have merit, and deny the violations of law alleged in the objections.

111. Federal Defendants admit the allegations in the third and fourth sentences. The allegations in the seventh sentence purport to characterize the Forest Service's response to objections, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations contrary to the plain language, context, and meaning of the final determinations of the agencies in the Administrative Records. Federal Defendants deny the remaining allegations.

**“FIRST CLAIM FOR RELIEF”**  
**“(Violation of ESA and APA--Failure to Use Best Scientific and Commercial Data Available in Analyzing Impacts of the Sunnyside Project)”**

112. Federal Defendants incorporate all preceding paragraphs in this Answer.

113. The allegations purport to quote from and characterize the Endangered Species Act, asserting legal conclusions that require no response. Federal Defendants deny any allegations contrary to the plain language, context, and meaning of the final determinations of the agencies in the Administrative Records.

114. Federal Defendants deny the allegations and deny any violation of law.

115. Federal Defendants deny the allegations and deny any violation of law.

116. Federal Defendants deny the allegations and deny any violation of law.

117. Federal Defendants deny the allegations and deny any violation of law.

**“SECOND CLAIM FOR RELIEF”**

1           **“(Violation of ESA and APA – Arbitrary Disregard of Relevant Factors in**  
2                                   **Evaluating Project Impacts on ESA-Listed Species)”**

3           118. Federal Defendants incorporate all preceding paragraphs in this Answer.

4           119. The allegations purport to quote from and characterize the Endangered Species  
5 Act and caselaw interpreting the act, asserting legal conclusions that require no response.  
6 Federal Defendants deny any allegations contrary to the plain language, context, and  
7 meaning of the final determinations of the agencies in the Administrative Records.

8           120. Federal Defendants deny the allegations and deny any violation of law.

9           121. Federal Defendants deny the allegations and deny any violation of law.

10          122. Federal Defendants deny the allegations and deny any violation of law.

11                                   **“THIRD CLAIM FOR RELIEF”**

12          **“(Violation of NEPA and APA – Arbitrary and Capricious Analysis of Cumulative**  
13                                   **Impacts of the Sunnyside Projects)”**

14          123. Federal Defendants incorporate all preceding paragraphs in this Answer.

15          124. The allegations purport to quote from and characterize NEPA, its  
16 implementing regulations, and caselaw interpreting NEPA, asserting legal conclusions  
17 that require no response. Federal Defendants deny any allegations contrary to the plain  
18 language, context, and meaning of the final determinations of the agencies in the  
19 Administrative Records.

20          125. The allegations purport to quote from and characterize caselaw interpreting  
21 NEPA, asserting legal conclusions that require no response. Federal Defendants deny  
22 any allegations contrary to the plain language, context, and meaning of the final  
23 determinations of the agencies in the Administrative Records.

24          126. Federal Defendants deny the allegations and deny any violation of law.

25          127. Federal Defendants deny the allegations and deny any violation of law.

26          128. Federal Defendants deny the allegations and deny any violation of law.

27                                   **“FOURTH CLAIM FOR RELIEF”**  
28



1           **“(Violation of NEPA and APA – Agency Action Unlawfully Withheld Due to**  
 2           **Failure to Prepare Supplemental Environmental Analysis)”**

3           129. Federal Defendants incorporate all preceding paragraphs in this Answer.

4           130. The allegations purport to quote from and characterize NEPA, its  
 5 implementing regulations, and caselaw interpreting NEPA, asserting legal conclusions  
 6 that require no response. Federal Defendants deny any allegations contrary to the plain  
 7 language, context, and meaning of the final determinations of the agencies in the  
 8 Administrative Records.

9           131. Federal Defendants deny the allegations and deny any violation of law.

10          132. Federal Defendants deny the allegations and deny any violation of law.

11          133. Federal Defendants deny the allegations and deny any violation of law.

12           **“FIFTH CLAIM FOR RELIEF”**

13          **“(Violation of NEPA and APA-Arbitrary and Capricious Analysis of Threats to**  
 14          **Groundwater in the Sunnyside Project Area)”**

15          134. Federal Defendants incorporate all preceding paragraphs in this Answer.

16          135. The allegations purport to quote from and characterize NEPA and caselaw  
 17 interpreting NEPA, asserting legal conclusions that require no response. Federal  
 18 Defendants deny any allegations contrary to the plain language, context, and meaning of  
 19 the final determinations of the agencies in the Administrative Records.

20          136. The allegations purport to quote from and characterize NEPA and caselaw  
 21 interpreting NEPA, asserting legal conclusions that require no response. Federal  
 22 Defendants deny any allegations contrary to the plain language, context, and meaning of  
 23 the final determinations of the agencies in the Administrative Records.

24          137. Federal Defendants deny the allegations and deny any violation of law.

25          138. Federal Defendants deny the allegations and deny any violation of law.

26           **“SIXTH CLAIM FOR RELIEF”**

27          **“(Violation of NEPA, 36 C.F.R. § 218.8(c), and APA—Arbitrary and Capricious**  
 28          **Rejection of Scientific Objections Regarding the Sunnyside Project)”**



1 139. Federal Defendants incorporate all preceding paragraphs in this Answer.

2 140. The allegations purport to quote from and characterize NEPA, its  
3 implementing regulations, and caselaw interpreting NEPA, asserting legal conclusions  
4 that require no response. Federal Defendants deny any allegations contrary to the plain  
5 language, context, and meaning of the final determinations of the agencies in the  
6 Administrative Records.

7 141. Federal Defendants deny the allegations and deny any violation of law.

8 142. Federal Defendants deny the allegations and deny any violation of law.

9 143. Federal Defendants deny the allegations and deny any violation of law.

10 **“REQUEST FOR RELIEF”**

11 The remaining allegations set forth in the Second Amended Complaint (pages  
12 64-65) consist of Plaintiffs’ prayers for relief, which require no response. Federal  
13 Defendants deny any violation of law and deny that Plaintiffs are entitled to their  
14 requested relief or any relief whatsoever.

15 **GENERAL DENIAL**

16 Federal Defendants deny all allegations in the Second Amended Complaint,  
17 whether express or implied, that are not otherwise specifically admitted, denied, or  
18 qualified herein.

19 **DEFENSES**

- 20 1. Plaintiffs lack standing to raise some or all of their claims.  
21 2. Plaintiffs’ allegations fail to state a claim upon which relief may be granted.  
22 3. Plaintiffs have waived or failed to exhaust some or all of their claims.  
23 4. Some or all of Plaintiffs’ claims are moot.

24  
25 Submitted this 14th day of October, 2025,

26  
27 ADAM R.F. GUSTAFSON  
28 Acting Assistant Attorney General  
Environment & Natural Resources Division  
U.S. Department of Justice

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/s/ Andrew A. Smith  
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